

Ordinance No.: 17-18
Zoning Text Amendment No.: 12-05
Concerning: Commercial/Residential
Zones - Grandfathering
Draft No. & Date: 3 – 6/27/12
Introduced: February 28, 2012
Public Hearing: April 10, 2012
Adopted: July 10, 2012
Effective: July 30, 2012

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: The Planning, Housing, and Economic Development Committee

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- apply the grandfathering provisions of CR zones to CRT and CRN zones; and
- revise the grandfathering provision for projects with a previously approved special exception.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-15 “COMMERCIAL/RESIDENTIAL ZONES.”
Section 59-C-15.9 “Existing Approvals.”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate that text is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

OPINION

Zoning Text Amendment (ZTA) 12-05, sponsored by the Planning, Housing, and Economic Development Committee, was introduced on February 28, 2012.

The purpose of ZTA 12-05 is to give greater force and effect to the terms and conditions of any special exception approvals, particularly when a sketch plan, preliminary plan, or site plan is before the Planning Board. ZTA 12-05 would also fully extend the grandfathering provisions of the CR zones to CRN and CRT zones. It would grandfather lawfully existing structures or uses, approved development plans, schematic development plans, preliminary plans, and special exceptions.

The issue concerning special exceptions was raised in the course of the Council's deliberations on the Wheaton and Kensington Master Plans and the Wheaton Sectional Map Amendment. Residents were concerned that the protections afforded residential properties in the course of special exception approvals would be completely ignored in the course of approving new plans.

The Planning Board recommended approval of ZTA 12-05 with a modification to retain notification to the Board of Appeals that the special exception has been abandoned. The Planning Board also recommended deleting a phrase concerning the status of uses and structures approved as special exceptions. Planning Staff recommended deleting the provision that stated "the Planning Board must consider the terms and conditions of the approved special exception" when approving a plan under the CR, CRN, or CRT zones. Planning Staff expressed the opinion that the new zone should reflect a new determination by the Council about the appropriateness of the allowed uses, and that property owners should be able to proceed accordingly. As an alternative to deleting the provision, Planning Staff recommended changing the "must consider" to "may consider". The Planning Board rejected these recommendations.

The County Council held a public hearing on April 10, 2012 to receive testimony concerning the proposed text amendment. Testimony favored approval of ZTA 12-05. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on June 18, 2012 to review the amendment. The Committee (3-0) recommended approval of ZTA 12-05 with amendments. The Committee recommended retaining the requirement for special exception holders to notify the Board of Appeals when they wish to abandon the special exception.

After the Committee meeting, staff advised the Committee of the need to clarify that a special exception holder had the right to renovate, continue, repair, or reconstruct their building approved under the special exception. The Committee agreed to recommend that additional change.

The District Council reviewed Zoning Text Amendment No. 12-05 at a worksession held on July 10, 2012 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 12-05 will be approved as amended.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-C-15 is amended as follows:

DIVISION 59-C-15. COMMERCIAL/RESIDENTIAL ZONES.

* * *

59-C-15.9. Existing Approvals.

- (a) One or more lawfully existing buildings, structures, or uses that predate the application of the CRT, CRN, or CR zone to the land are conforming structures or uses and may be continued, renovated, repaired, or reconstructed to the same size and configuration, or enlarged up to a total of 10 percent above the total existing floor areas of all buildings and structures on site or 30,000 square feet, whichever is less, and such development does not require a site plan. Any enlargement of a building structure or use may be further limited by Subsection (e). Expansions in excess of the limitations in this Subsection will require compliance with the full provisions of this Division. Uses located in a building or structure deemed conforming under the provisions of this Subsection may be converted to any permitted non-residential or residential use(s) up to the density limits for the land use established by the CRT, CRN, or CR zone.
- (b) A project that received an approved development plan under Division 59-D-1 or schematic development plan under Division 59-H-2 before the application of the CRT, CRN, or CR [zones] zone to the land may proceed under the binding elements of the development plan and will thereafter be treated as a lawfully existing building, and may be renovated or reconstructed under Subsection (a) above. Such development plans or schematic development plans may be amended as allowed under Division 59-D-1 or 59-H-2 under the provisions of the previous zone; however, any incremental increase in the total floor area beyond that allowed by Subsection (a) above or any incremental increase in building height greater

than 15 feet requires, with respect to the incremental increase only, full compliance with the provisions of this Division. Any failure to fully comply with the binding elements of the development plan will require full compliance with the provisions of this Division.

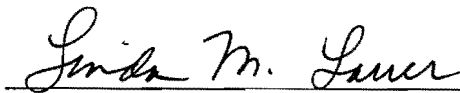
- (c) At the option of the owner, any portion of a project subject to an approved development plan or schematic development plan described in Subsection (b) above may be developed under this Division. The remainder of that project continues to be subject to the approved development plan or schematic development plan under Subsections (a) and (b).
- (d) A project which has had a preliminary or site plan approved before the application of the CRT, CRN, or CR zone to the property may be built or altered at any time, subject to either the full provisions of the previous zone or this Division, at the option of the owner. If built under the previous approval, it will then be treated as a conforming building, structure, or use and may be renovated, continued, repaired, or reconstructed under Subsection (a) above. If built with an incremental increase over the previous approval, only that incremental increase must comply with this Division.
- (e) A project that [has] had a special exception approved before application of the CRT, CRN, or CR zone to the site may:
 - (1) continue as a lawfully existing use and a lawful structure as long as it fully complies with the terms and conditions of its approval[. Any] and may be renovated, continued, repaired, or reconstructed; any failure to fully comply with the terms and conditions of the special exception approval will require full compliance with the provisions of this Division[.];
 - (2) [If a special exception holder chooses to] operate under this Division instead of under the special exception, [written notice must be

provided to the Board of Appeals that the special exception has been abandoned] but written notice must be provided to the Board of Appeals that the special exception has been abandoned.

Any [[by the approval of a]] sketch plan, preliminary plan, or site plan [[; any plan]] approved by the Planning Board under this Division must consider the terms and conditions of the approved special exception.

Sec. 2. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

A handwritten signature in cursive script, reading "Linda M. Lauer", is written over a horizontal line.

Linda M. Lauer, Clerk of the Council